

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 729 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MUSA UMARJI ADAM BHAYADA

Versus

MAHMAD HAJI IBRAHIM ADAM PATEL

Appearance:

Civil Revision Application No. 729 of 1995
MR MK VAKHARIA for Petitioners
NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/09/2000

ORAL JUDGEMENT

The respondent-plaintiff filed an
application for interim injunction in Regular Civil Suit
no.292 of 1994 seeking a relief of temporary injunction

restraining the petitioners-defendants and their representatives from making any kind of interference or obstruction in the instalment of a door on southern side of the suit house bearing no. 296 of village Karmad of Bharuch district. Initially, ex parte order was passed. Later on by an order dated 25.10.1994, the trial court granted a temporary injunction as prayed for and the ex parte injunction granted in terms of para-5(1) of the application was made absolute till the final disposal of the application exh. 5 by an order dated 25th October, 1994. The petitioners therefore filed Civil Misc. Appeal No. 132 of 1994 against the order of the trial court. The lower appellate court by its judgment and order dated 31.3.95 has dismissed the appeal confirming the order of the trial court. Hence, this Revision Application has been filed by the petitioners-original defendants.

2. Heard the learned advocate for the petitioners. According to the plaintiff's case, the plaintiff owns house no.296 in village Karmad of Dist: Bharuch and is in possession of that house. The plaintiff has a right to instal a door in the said property on the southern side. The defendants have no right or authority to interfere in the use and occupation of the said house. The plaintiff wanted to demolish the southern side wall and wanted to install a door in front portion of the said house. But the defendants threatened the plaintiff and restrained him from doing so. The plaintiff tried to persuade the defendants, but all in vain, hence, the suit has been filed for a permanent injunction against the defendants restraining them from making any interference to the plaintiff in demolishing the southern wall of the house of the plaintiff and further restraining the defendants from preventing the plaintiff from installing the door or making the construction. The suit was filed alongwith the application exh. 5 for an interim injunction. The trial court granted ad-interim injunction for a limited period and notice was issued to the defendants. After hearing both the parties, the trial court granted interim order on application exh. 5 and made it absolute till the final disposal of the application exh. 5. The defendants filed their written statement cum reply at exh. 13 to the plaint challenging that application on the grounds mentioned therein. The petitioners-defendants contended that they have a right of way from the southern side of the suit house. They have also contended that there would be an interference and obstruction in their right of way if the door is installed on the southern side of the suit house. The

plaintiff has no right to put the door.

3. The appellate court after going through the material on record and considering the submissions made on behalf of the parties dismissed the appeal by an order dated 31st March, 1995 and confirmed the findings of the trial court.

4. I have carefully considered the contentions raised by the learned advocate for the petitioners. It appears from the facts stated by the learned advocate for the petitioners that there are two houses, one belonging to the plaintiff and other to the defendants. On southern side, the defendants have a door in that house, while the plaintiff has a door on western side. The plaintiff wanted to open a door on the southern side also after demolishing the southern wall of the house in dispute. There is a way in front of the southern wall of both the houses of the plaintiff as well as of the defendants. If any door is installed by the plaintiff on southern side, that will not obstruct the right of way of the defendants. The lower appellate court has considered the arguments of the petitioners-defendants that the plaintiff cannot be restrained by the defendants from making the use of their own property in any manner. The defendants have no right to cause any obstruction and if the plaintiff installs the door in his property without causing any interference to the defendants. The appellate court has observed that it appears prima facie that the reasons given by the trial court for coming to the conclusions are quite just and proper and supported by the evidence on record and the order passed by the trial court was not perverse, illegal, arbitrary or improper. Hence, no interference was required by the appellate court. It has also been considered by the lower appellate court that the Karmad Gram Panchayat has previously granted permission for installing the door, but the plaintiff could not do so due to objections raised by the defendants and on the basis of the evidence on record, it can be said that there is no possibility at all of any kind of interference or obstruction in the right of way to the defendants, if the plaintiff installs a door in the wall of the house.

5. The learned counsel for the petitioners could not point out that the courts below have committed any jurisdictional error, illegality or material irregularity in passing the impugned orders. Accordingly, I do not find any good reason calling for

interference by this Court in the concurrent findings of the courts below. This Revision is therefore, dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

In the last, the learned advocate for the petitioners prayed to direct the trial court to dispose of the suit in a stipulated time. For that purpose, the petitioners are at liberty to move the court concerned and if such an application is moved before the trial court, the trial court will decide the same in accordance with law.

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